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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT DESSELLE, CO-EXECUTOR FOR
THE ESTATE OF MARK S. McNAIL, Petitioner,

vs.

DENNIS EIDSON, Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT, STATE OF KANSAS

PETITION FOR WRIT OF CERTIORARI

ROBERT L. DESSELLE, No. 39490
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PRO SE PETITIONER

3781

QUESTION PRESENTED FOR REVIEW

1. Whether a Kansas Divorce Decree, which does not qualify as a Qualified Domestic Relations Order, is pre-empted by ERISA, when the Divorce Decree limits alienation of life insurance benefits.

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D. 29 U.S.C. §1002. Definitions
(1) the terms "employee welfare benefit plan" and "welfare plan" man any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (a) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, of (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

TABLE OF CITATION
CASES

Ablamis v. Roper, 937 F2d 1450, 1458.

Carland v. Metropolitan Life Ins. Co., 935 F2d 1114.

California Division of Labor Standards Enforcement v. Dillingham Construction, 519 U.S. 316.

California Division of Labor Standards Enforcement v. Dillingham Construction, NA., Inc., 117 S.Ct. 832, 837.

DeBuono v. Nysa, Ila Medical and Clinical Services Fund, 117, S.Ct. 1747, 1751.

District of Columbia v. Greater Washington Board of Trade, 506 U.S. 125, 129.

Emard v. Hughes Aircraft Co., 153 F3d 949, 953.

Hawkins v. Commissioner of Internal Revenue, 86 F.3d. 982, 988-993 (10th Cir. 1996).

Metropolitan Life Ins. Co. v. Fowler, 922 F.Sup. 8 (6th Cir.).

Metropolitan Life Ins. Co. v. Marsh, 119 F3d 415, 420.

Metropolitan Life Ins. Co. v. Wheaton, 42 F3d 1080, 1082-1085 (7th Cir.).

N.Y. State Conference of Blue Cross/Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (656).

Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 46, 107th Sup. Ct. 1549, 95 L.Ed. 2d 39.

Prudential Ins. Co. v. National Park Medical Center, 154 F3d 812, 819.

OPINIONS BELOW

The February 2, 1999 denial of plaintiff's petition for review, case number 98-78717-AS is reprinted in the separate appendix to this petition, pp. 11.

The prior opinion of the Court of Appeals of the State of Kansas, entered October 30, 1998, whose judgment is herein sought to be reviewed, is reprinted in the separate appendix to this petition, pp. 12.

The prior opinion of the Johnson County District Court for the State of Kansas, order entered by Memorandum Decision on December 16, 1996, is reprinted in the separate appendix to this petition, pp. 17.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals in the state of Kansas, entered on October 30, 1998. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

STATUTES

29 U.S.C. §1056(d)
20 U.S.C. §1056(d)(1)
29 U.S.C. §1056(d)(3)(a)
29 U.S.C. §1056(d)(3)(b)(i)
28 U.S.C. §1254(1).
29 U.S.C. §1144(a)
29 U.S.C. §1144(b)(7)
Section 1144(c)(1)

STATEMENT OF THE CASE

The Honorable Steve Leben, of the District Court of Johnson County, Kansas, made the following findings of facts, and included them in his Memorandum Decision and Journal Entry. Those findings were that Kristan (McNail) O'Brian, and Mark S. McNail, were divorced in case number 91 C 14576, pursuant to the Decree of Divorce, filed October 29, 1992.

Paragraph ten (10) of the Decree of Divorce provided, "Respondent Mark McNail, shall continue to maintain and pay the premium on his current $150,000.00 life insurance policy, to cover his child support obligation and shall not change the beneficiaries thereon without notice to and written consent from the Petitioner (Kristen).

Paragraph fourteen (14) of said decree provided, "That Petitioner (Kristen) shall receive one-half of Respondent's (Mark's) 401-K plan as currently constituted by way of a duly executed QDRO; and the court shall retain jurisdiction over such matter until an order to that effect has been signed and accepted by Respondent's (Mark's) plan administrator.

Said Decree made no mention of the name of Mr. McNail's employer, nor is there any indication given as to the identify of the life insurance policy referred to in paragraph ten (10). The referenced policy was provided to Mr. McNail as part of his employee benefit plan with his employer, Coca-Cola. On January 20, 1993, a copy of the Decree was sent to Coca-Cola by Mr. McNail's attorney.

On May 6, 1994, Mr. McNail submitted a change of beneficiary from Defendant Dennis Eidson, to "The Trust of Mark McNail", with Robert Desselle as trustee.

On June 2, 1994, Desselle sent another beneficiary change to Coca-Cola, naming Mark's estate as the beneficiary with Robert Desselle and Leroy McNail as co-executors. On the afternoon of June 2, 1994, at 2:30 p.m., Mark S. McNail, died.

No written consent was obtained from Kristen McNail O'Brian, prior to either of the beneficiary changes. On May 19, 1995, plaintiff Eidson submitted a claim to Coca-Cola for payment of the life insurance proceeds. The court determined that the Decree of Divorce related to Mr. McNail's life insurance policy did not constitute a QDRO and therefore, the orders entered by the state court in the divorce action were not effective as they did not comply with statutory requirements for a QDRO and were thus pre-empted by ERISA. The court ordered that the clerk of the court pay out $190,000.00 to the Estate of Mark McNail. The Kansas Court of Appeals reversed and remanded the Honorable Steve Leben's decision on October 30, 1998. The plaintiff filed a timely Petition for Review with the Supreme Court of the State of Kansas. Said petition was considered by the court and denied, February 2, 1999.

REASONS FOR GRANTING THE WRIT

The Judgment of the Supreme Court of the State of Kansas should be reviewed by this court

ERISA, by its very terms, "supercedes any and all state laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute (29 U.S.C. §1144(a)). "The term 'State Law' includes all laws, decisions, rules, regulations or other state action having the affect of law..." *id.*, Section 1144(c)(1).

Initially the Supreme Court interpreted ERISA's preemption statute as creating a "deliberately expansive" preemption of state law. *Emard v. Hughes Aircraft Co.*, 153 F3d 949, 953, quoting *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 46, 107th Sup. Ct. 1549, 95 L.Ed. 2d 39.

The Supreme Court has, "long acknowledged that ERISA's preemption provision is clearly expansive." *California Division of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316. The Supreme Court has variously described the ERISA preemption clause as having a "broad scope and an expansive sweep and [as being] broadly worded deliberately expansive and conspicuous for its breadth." *Dillingham.* Recently however, the Supreme Court has also made clear particularly in recent decisions, that the ERISA preemption clause cannot be read to "extend a furthest stretch of its indeterminancy." *Prudential Ins. Co. v. National Park Medical Center*, 154 F3d 812, 819, quoting *DeBuono v. Nysa, Ila Medical and Clinical Services Fund*, 117, S.Ct. 1747, 1751.

California Division of Labor Standards Enforcement v. Dillingham Construction, NA., Inc., 117 S.Ct. 832, 837, sets forth a two-prong inquiry to determine whether or not a state law relates to an employee benefit plan covered by ERISA. "A law relates to a covered employee benefit plan for the purposes of Section 514(a), 'if it 1) has a connection with, or 2) reference to such a plan'." *Prudential Ins. Co. v. National Park Medical Center, id.*, p. 819 quoting *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125, 129 (rest of citations omitted). The 1995 Supreme Court case of *N.Y. State Conference of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, began putting the brakes on the ERISA expansion. In *Travelers*, the court continued to use the two-prong approach, and quickly determined that the surcharges being dealt with in that case are imposed upon patients and

HMO's did not make specific reference to ERISA plans in any manner, *Travelers*, 514 U.S. @656. The Court then dealt with the "connection with" prong and determined that they would have to look at the objectives of the ERISA statute as a guide to the scope of the state law that congress understood would survive. Thus if a particular law was not the focus of the ERISA legislation, then it would survive preemption analysis.

A year after *Travelers*, the Court decided *Dillingham*, which dealt with another situation where the law did not refer to ERISA plans and therefore the court went through the "connection with" analysis. The court concluded that, "Rather to determine whether a state law has the forbidden connection, we look both to 'the objectives of the ERISA statute as a guide to the scope of the state law that congress understood would survive' as well as to the nature of the effect of state law on ERISA plans." *Dillingham*, at p. 8 quoting *Travelers*, at p. 657.

The question must be raised in this case then as to whether the divorce decree has a reference to or a connection with an ERISA plan. There can be little question that it does. Specifically, looking at the congressional intent when they implemented ERISA, congress specifically addressed divorce decrees and the preemption issue. Congress provided, properly drafted, qualified domestic relations orders were not preempted by ERISA, 29 U.S.C. §1056. Additionally, even more compelling is, "The fact that congress specifically provided that certain types of domestic relations orders— those not constituting, 'Qualified' orders— are subject to the anti-alienation provision." *Ablamis v. Roper*, 937 F2d 1450, 1458, and 29 U.S.C. §1056(d)(3)(a).

This case was tried to stipulated facts in the original action. It was clear and the lower court fund that the divorce decree did not qualify as a QDRO. This conclusion has not

been challenged. The Kansas Appellate Court erroneously focused on the distinction between welfare plans and pension plans. This decision, which was handed down by the Kansas Appellate Court and affirmed by the Kansas Supreme Court, completely ignored the Tenth Circuit Case of *Carland v. Metropolitan Life Ins. Co.*, 935 F2d 1114. The *Carland* court read Sections 1144(b)(7) and 1056(d)(3)(b)(i) together to determine that ERISA statute preempts divorce decrees unless they are QDRO's regardless of whether they are pension or welfare benefit plans. *Carland*, at page 1120 explains this conclusion, "The general goals of ERISA are served by this interpretation of the preemption exemption because a divorce decree meeting the requirements contained in Section 1056(d) provides all the necessary information to determine the identity of a beneficiary without creating unreasonable administrative burdens for the plan administrator." As stated before the divorce decree has been determined to not be a Qualified Domestic Relations Order.

Carland, also concluded that there was no reason to distinguish between whether the plan is a pension, or a welfare plan. The Kansas Appellate Court only focused on Section 1056(d)(1) in determining that the anti-alienation provision applies only to pension plans. The clear trend among the various federal circuits is to read Section 1056(d)(1) in conjunction with 29 U.S.C. §1144(a), "Specifically congress mandated that ERISA shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan covered by the statute." *Metropolitan Life Ins. Co. v. Marsh*, 119 F3d 415, 420. See also *Metropolitan Life Ins. Co. v. Fowler*, 922 F.Sup. 8 (6th Cir.) and *Metropolitan Life Ins. Co. v. Wheaton*, 42 F3d 1080, 1082-1085 (7th Cir.) The Kansas Appellate Court and Supreme Court ignored their own Tenth Circuit precedence and similar cases decided in other jurisdictions.

Congress intended for domestic decrees to be preempted by ERISA unless that decree was a Qualified Domestic Relations Order. 29 U.S.C. §1056(d) provides in relevant part:

(B) For purposes of this paragraph—

(i) The term "qualified domestic relations order" means Domestic Relations Order—

(I) which creates or recognizes the existence of an alternate payee's right to or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree or order (including approval of a property settlement agreement) which—

(I) relates the provisions of child support, alimony payments or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a state domestic relations laws (including community property law).

(C) A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(i) the name and last known mailing address (if any) of participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant benefits to be paid by the plan to each alternate payee or the manner in which such amount of percentage is to be determined,

(iii) the number of payments or periods to which such order applies, and

(iv) each plan to which such order applies.

It should be clear that the McNail Divorce Decree does not qualify as a QDRO. Within the McNail Divorce Decree there is no mention of the name of Mr. McNail's employer, nor is there any possible reference to the plan to which the order applies, nor is there the mailing address or the alternate payee Dennis Eidson. See also Hawkins v. Commissioner of Internal Revenue, 86 F.3d. 982, 988-993 (10th Cir. 1996) (discussing requirements for divorce decree to constitute a QDRO).

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that its Petition for Writ of Certiorari be granted.

Respectfully submitted this 9th day of July, 1999,

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Appendix A-1

SUPREME COURT DISTRICT CASE NO. 95C4205

IN THE SUPREME COURT
OF THE STATE OF KANSAS

ROBERT L. DESSELLE
DESSELLE LAW OFFICE LLC
1425 S NOLAND RD
INDEPENDENCE MO 64055

DENNIS EIDSON, APPELLANT
v.
CIGNA INSURANCE COMPANY NO. 97-78717-AS
AND
ROBERT DESSELLE, TRUSTEE FOR
THE TRUST OF MARK MCNAIL, APPELLEES.

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN BY THE COURT:

PETITION FOR REVIEW BY ROBERT DESSELLE.
CONSIDERED BY THE COURT AND DENIED.
RESPONSE NOTED.

DATE: 02/02/99.

CAROL G. GREEN
CLERK

APPENDIX A

Appendix B-1

NOT DESIGNATED FOR PUBLICATION
NO. 78,717
IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DENNIS EIDSON,
Appellant,
v.
CIGNA INSURANCE COMPANY and
ROBERT DESSELLE, Trustee for
The Trust of MARK McNAIL,
Appellees.

MEMORANDUM OPINION

Appeal from Johnson District Court; STEVE LEBEN, judge. Opinion filed October 30, 1998. Reversed and remanded with instructions.

Robert G. Scott, of Neill, Scott, Terrill & Embree, L.L.C., of Lenexa, for appellant.

Robert L. Desselle, of Desselle Law Office, L.L.C., of Independence, Missouri, for appellees.

Before BRAZIL, C.J., RULON, J., and WAHL, S.J.

Per Curiam: In 1992, Kristan and Mark McNail were divorced. The divorce decree provided that Mark was to maintain his current life insurance policy to cover his child support obligation and was not to change the beneficiary

without the consent of Kristan. Eidson, who is Kristan's father, was the named beneficiary. Mark filed a document changing his beneficiary on May 6, 1994, without Kristan's knowledge or consent. Mark died on June 2, 1994.

Eidson filed a petition for declaratory judgment asking that the change of beneficiary be declared null and void and that the life insurance proceeds be ordered to be paid out to him as the proper beneficiary. Mark's employer and the insurance company paid the proceeds from the policy, $190,000, to the clerk of the court and was dismissed from the action. Stipulated facts were submitted to the court and a hearing with testimony and argument was held. The district court found that the provision of the divorce decree relating to the life insurance policy did not qualify as a Qualified Domestic Relations Order (QDRO)(and had no effect. The trial court ruled that the divorce decree was preempted by federal law under the Employment Retirement Income Security Act (ERISA) and ordered the insurance proceeds paid to Mark's estate.

Eidson argues that the district court erred by applying the QDRO requirements to McNail's life insurance proceeds. He maintains that the life insurance policy is classified as a welfare benefit plan under ERISA and that the bar against assigning or alienating benefits is limited to pension benefit plans. We agree.

Under ERISA, welfare plans and pension plans are distinct terms. An "employee welfare benefit plan" or "welfare plan" is defined in 29 U.S.C. §1002(1)(1994). An "Employee pension benefit plan" or "pension plan" is defined in 29 U.S.C. §1002(2). When both types of plans are referred to in the

statute, the term "employee benefit plan" or "plan" is used. 29 U.S.C. §1002(3).

The trial court's decision was based on the anti-alienation provision of 29 U.S.C. §1056(d)(1)(1994), which provides: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." An exception to this is applicable if there is a QDRO. 29 U.S.C. §1056(d)(3). The district court found that the divorce decree did not meet the QDRO requirements and ruled that the insurance policy benefits could not be affected by the divorce decree and that the decree would not be enforced.

The insurance policy on McNail is a welfare plan under 29 U.S.C. §1002(1). The anti-alienation provision of 29 U.S.C. §1056(d)(1), which is specifically limited to pension plans, does not apply. For this reason, it is immaterial whether the terms of the divorce decree qualify it as a QDRO.

Interpretation of ERISA is a matter of federal law and decision s of the United States Supreme Court, to the extent they are applicable, control. *Lawrence paper Co. v. Gomez*, 257 Kan. 932, 934, 897 P.2d 134, *cert. denied* 516 U.S. 869 (1995).

The United States Supreme Court has ruled directly about the distinction between pension plans and welfare plans. *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 100 L. Ed. 2d 836, 108 S. Ct. 2182 (1988), dealt with the garnishment of ERISA welfare plan benefits under a state statute. The court stated that 29 U.S.C. §1056(d)(1) barred alienation of pension plan benefits, but that there was no similar

ERISA provision applicable to welfare benefit plans. 486 U.S. at 836-37. The court noted that the 1984 ERISA amendment found at 29 U.S.C. 1056(d)(3) was intended to remove the protection against garnishment form pension plan benefits when enforcement of a domestic relations order was sought. 4876 U.S. at 838-40.

The difference between pension benefit plans and welfare benefit plans was reaffirmed in *Guidry v. Sheet Metal Workers Pension Fund*, 493 U.S. 365, 107 L.Ed. 2d 782, 110 S. Ct. 680 (1990). In *Guidry*, the court cited *Mackey* and stated that Congress chose to impose the limitation on alienation or garnishment of plan benefits only with respect to pension plans and not welfare plans. 493 U.S. at 371.

The Court recently decided *Boggs v. Boggs*, 520 U.S. ____, 138 L. Ed. 2d 45, 117 S. Ct. 1754, *reh. denied.* 118 S. Ct. 9 (1997). The Court ruled that ERISA governs employee benefit plans which include both pension and welfare plans. 138 L. Ed. 2d at 55. All employee benefit plans must conform to various reporting, disclosure, and fiduciary requirements, while pension plans must also comply with participation, vesting, and funding requirements. The anti-alienation and QDRO provisions of 29 U.S.C. §1056(d) are pension plan requirements. 138 L. Ed. 2d at 55.

The trial judge relied on *Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114 (10th Cir. 1991), which presented a situation where the beneficiary of a group life insurance policy had been changed contrary to the provisions of a divorce decree. The federal district judge had ruled that the anti-alienation provisions did not apply because it was part

welfare plan. The Tenth Circuit affirmed the district judge, basing its rationale on its determination that the decree qualified as a QDRO. The court went on to state that because 29 U.S.C. §1056(d)(3)(B)(i)(did not restrict its application to pension benefit plans, it was construing the section to apply to all QDROs whether they involved pension or welfare benefit plans. There is no need for 29 U.S.C. §1056(d)(3)(B)(i) to state that it is limited to pension plans because 29 U.S.C. §1056(d) already specified that he entire section pertained only to pension plans. That language in *Carland* is inconsistent with the United States Supreme Court cases.

ERISA does not prohibit McNail's life insurance policy benefits from being assigned or transferred. Under the divorce decree, Eidson was designated as the policy beneficiary. McNail's attempt to change the beneficiary contrary to the divorce decree had not effect. See *Pierce v. Pierce*, 12 Kan. App. 2d 810, 758 P.2d 252 (1988), *aff'd* 244 Kan. 246, 767 P.2d 292 (1989). The entire policy benefits paid in to the clerk of the court should be paid to Eidson.

Reversed and remanded with instructions.

Appendix C-1

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

DENNIS EIDSON,	)	
	)	Case No. 95C4205
Plaintiff,	)	
	)	Court no. 8
v.	)	
	)	Chapter 60
CIGNA INSURANCE CO., et al.,	)	
	)	
Defendants	)	

MEMORANDUM DECISION

This case was tried to the Court through presentation of stipulated facts and the testimony of Robert Desselle. Defendants Cigna Insurance Company and Coca-Cola Enterprises, Inc. have been dismissed from the lawsuit after paying the proceeds of the disputed life insurance policy to the Clerk of the District Court.

Facts relevant to the Court's decision are contained in the stipulation of facts entered into the parties and the decree of divorce entered October 20, 1992, in Case No. 91C14576. The Court will summarize those facts prior to discussing the applicable law.

Kristan (McNail) O'Brien and Mark McNail were divorced in Case No. 91C14576 pursuant to a decree of divorce filed October 20, 1992. The McNail's has two children, Kyle, born December 19, 1987, and John, born September 26, 1989.

Mark was required to pay child support in the amount of $425 per month to Kristan. Paragraph 10 of the decree provided:

> Respondent [Mark] shall continue to maintain and pay the premiums on his current $150,000 life insurance policy to cover his child support obligation and shall not change the beneficiaries thereon without notice to and written consent from petitioner [Kristan].

Paragraph 14 of the decree provided:

> [T]hat petitioner [Kristan] shall receive one half of respondent's [Mark's] 401K plan, as currently constituted, by way of a duly executed QDRO; and that the court shall retain jurisdiction over such matter until an order to that effect has been signed and accepted by respondent's [Mark's] plan administrator.

The decree included signature lines for the attorneys representing both Mark and Kristan and listed the address and telephone number of those attorneys below their signatures. No mention was made in the decree of the name of Mark's employer, nor was there any identification given as to the identity of the life insurance policy referred to in paragraph 10.

In fact, the referenced policy was provided to Mark as a part of his employee benefit plan with his employer, Coca-Cola. On January 20, 1993, a copy of the decree was sent to Coca-Cola by Mark's attorney. On May 6, 1994, Mark submitted a change of beneficiary, changing his beneficiary

from plaintiff Dennis Eidson to "Trust of Mark McNail," with Robert Desselle as the trustee. On June 2, 1994, Desselle sent another beneficiary change to Coca-Cola, naming Mark's estate as the beneficiary and Desselle and LeRoy McNail as co-executors.

Mark died on June 2, 1994, at 2:30 p.m. No written consent was obtained from Kristan prior to either of the beneficiary changes.

On May 19, 1995, plaintiff Eidson submitted a claim to Coca-Cola for payment of the life insurance proceeds. Defendant Desselle has claimed that the divorce decree is preempted by provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and, therefore, that the insurance proceeds should be paid pursuant to Mark's last designation despite the limitation in the divorce decree on changing the beneficiary. Defendant LeRoy McNail has filed a confession of judgment.

The issues before the Court ultimately come down to a relatively straightforward question: does the decree of divorce constitute a Qualified Domestic Relations Order (QDRO) under ERISA? Because the Court concludes that it does not, judgment must be granted against the claim of plaintiff Eidson.

The starting point for the Court's analysis is the decision of the United States Court of Appeals for the Tenth Circuit in Carland v. Metropolitan Life Insurance Co., 935 F.2d 1114 (1991). That case, like this one, considered whether a divorce decree issued by a Kansas court was preempted under ERISA. The Tenth Circuit held that state divorce decree provisions

limiting the ability to change beneficiaries in an employee benefit plan were not preempted by ERISA so long as they met the statutory requirements for a QDRO. 935 F.2d 15 1119-20. At least under the Tenth Circuit's view, this is true whether the employee benefits involve a pension or a welfare benefit plan. Id. at 1120. In Carland, the court held that "the divorce decree includes all the information required by the statute" and, therefore, that it was a QDRO and was not preempted by ERISA.

The requirements for a Qualified Domestic Relations Order are contained in 29 U.S.C. §1056(d). The relevant provisions of the statute are as follows:

(B) For purposes of this paragraph—

(i) The term "qualified domestic relations order" means Domestic Relations Order—

(I) which creates or recognizes the existence of an alternate payee's right to or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree or order (including approval of a property settlement agreement) which—

(I) relates the provisions of child support, alimony payments or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a state domestic relations laws (including community property law).

(C) A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(i) the name and last known mailing address (if any) of participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant benefits to be paid by the plan to each alternate payee or the manner in which such amount of percentage is to be determined,

(iii) the number of payments or periods to which such order applies, and

(iv) each plan to which such order applies.

29 U.S.C. §1056(d)(B) and (C)[1]

The Court concludes that the provision of the decree of divorce relating to Mark's life insurance policy does not constitute a QDRO. There is no mention in the decree of the name of Mark's employer, nor is there any possible reference to the plan to which the order applies. In Carland, where the decree was found to satisfy the requirements for a QDRO, the decree set forth the specific group insurance policy certificate at issue and named the company issuing the life insurance policy. However, there simply is not sufficient information in the decree of divorce between Mark and Kristan for it to qualify as a QDRO with respect to the life insurance policy. See also Hawkins v. Commissioner of Internal Revenue, 86 F.3d 982, 988-93 (10th Cir. 1996) (discussing requirements for divorce decree to constitute QDRO).

---

[1]The Provisions of 29 U.S.C. section (d)(D) are not at issue here.

As the Tenth Circuit explained in the Carland decision, the ERISA preemption doctrine was intended to promote ease of administration of employee benefit programs subject to ERISA. When a court order meets the requirement for treatment as a QDRO, then the QDRO "provides all the necessary information to determine the identity of a beneficiary without creating unreasonable administrative burdens for the plan administrator." 935 F.2d at 1120. However, when the court order does not provide that information, the plan administrator is entitled to proceed to pay out benefits pursuant to beneficiary designations filed with the plan and need not conduct an investigation to locate the information that would have been provided through a proper QDRO.

The Court must also address the effect, if any, of the written confession of judgment filed by defendant and co-executor, LeRoy McNail. Under the circumstances of this case, the Court has concluded that his confession of judgment is of no effect in the lawsuit now pending. The basis of the Court's decision is that the orders entered by the state court in the divorce action were not effective because they did not comply with statutory requirements for a QDRO. This Court cannot enforce orders clearly preempted by federal law. The situation is analogous to one in which ta court is later asked to enforce a judgment for which there initially had been no jurisdiction. The earlier judgment is a nullity and cannot be enforced. Here, too, the earlier order, which was ineffective when made, cannot be enforced here. The Court notes, however, that it is not called upon to decide any dispute between co-executors Desselle and LeRoy McNail as to their duties to the estate. The scope of their duties, if any, to provide support for Kyle and John McNail are not before this Court.

For the reasons set forth in this opinion, the Court concludes that the provision of the divorce decree prohibiting change of the beneficiary on Mark's life insurance plan with his employer was of no affect. Accordingly, the beneficiary on his insurance as of the date of his death was his estate, with Robert Desselle and LeRoy McNail as co-executors. Robert Desselle is directed to prepare a journal entry of judgment and order paying out the proceeds of the life insurance policy pursuant to the directions contained in this decision. Costs of this action are assessed against the plaintiff.

IT IS SO ORDERED.

/s/
Steve Leben
District Judge

cc: Robert G. Scott / Benjamin J. Neill
Kenneth Chambers
Robert L. Desselle
Matthew R. Davis
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APPENDIX C